

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Communications Assistance for Law)	ET Docket No. 04-295
Enforcement Act and Broadband Access and)	
Services)	RM-10865

**REPLY COMMENTS OF
SOUTH DAKOTA STATE UNIVERSITY**

Introduction and Summary

South Dakota State University (SDSU) respectfully submits these reply comments in response to the Further Notice of Proposed Rulemaking adopted in the above-captioned docket.¹ SDSU supports the comments filed by the Higher Education Coalition and submits this reply to amplify several points based on its own experience and circumstances.

SDSU asserts that the FCC should make clear that the private networks operated by colleges, universities, and research institutions are exempt from CALEA. SDSU's experience with law enforcement surveillance requests demonstrates that existing procedures are more than adequate to ensure prompt compliance with any lawful surveillance request by a law enforcement agency. Further, applying CALEA to SDSU's broadband network would impose significant costs that would impede SDSU's ability to deliver on its core responsibilities to students and society as a whole.

Discussion

1. The FCC Should Clarify That Higher Education Networks Are Exempt from CALEA.

Broadband networks operated by higher education and research institutions are not subject to CALEA because the statute expressly exempts "equipment, facilities, or services that support the

¹ *Communications Assistance for Law Enforcement Act and Broadband Access and Services*, First Report and Order and Further Notice of Proposed Rulemaking, ET Docket No. 04-295, FCC 05-153 (rel. Sept. 23, 2005) ("*Order*").

transport or switching of communications for private networks.” 47 U.S.C. § 1002(b)(2)(B).

Although the Commission acknowledged in the *Order* that private educational networks are exempt from CALEA, it introduced ambiguity by stating: “To the extent . . . that [such] private networks are interconnected with a public network, either the PSTN or the Internet, providers of the facilities that support the connection of the private network to a public network are subject to CALEA” *Order* at ¶ 36, n.100.

The Commission should clarify that only commercial entities are covered by the language in footnote 100, in light of the clear statutory exemption of private network operators. Alternatively, the Commission should invoke its discretionary authority under Section 102(8)(C)(ii) of CALEA to exempt higher education and research institutions from compliance with the forthcoming assistance-capability requirements. Such an exemption is necessary to remain faithful to congressional intent and to avoid imposing unnecessary burdens on colleges, universities, and research institutions.

Contrary to the suggestion by the Department of Justice that “no exemptions are appropriate based on the current record,” DOJ Comments at 11, the Higher Education Coalition has defined a narrow class of private network operators that should be exempt from CALEA for all the reasons contained in the Coalition’s comments and in these reply comments. The absence of existing compliance standards does not argue for postponing exemption determinations, but instead makes a prompt exemption more critical. Because the Commission has established an 18-month compliance deadline, SDSU must begin planning *now* to set aside funds for possible CALEA compliance. Far from being premature, an exemption for higher education and research institutions is urgently necessary.

2. SDSU’s Experience with Surveillance Requests Demonstrates the Absence of Any Need to Impose CALEA Requirements on Higher Education Networks.

SDSU's past experience indicates that existing procedures are more than adequate to ensure compliance with lawful surveillance requests, in light of both the infrequency of such requests and higher education institutions' history of full cooperation. Imposing burdensome new assistance-capability requirements under CALEA is simply not necessary to serve the interests of law enforcement.

3. A Broad Application of CALEA Would Impose Significant Burdens on SDSU and Divert Funds from Its Critical Educational Mission.

As noted above, SDSU believes that CALEA does not apply to it under the plain terms of the statute and under the most reasonable reading of the *Order*. If the Commission were to apply the language in footnote 100 of the *Order* broadly and conclude that higher education networks such as SDSU's must comply with some or all assistance capability requirements, such a ruling would impose significant and unwarranted burdens.

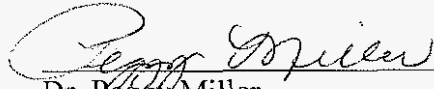
If the FCC were to apply CALEA broadly to higher education networks — contrary to the text of the statute — such a ruling would impose significant burdens that far outweigh its putative benefits. The Commission accordingly should exempt higher education institutions and research networks from CALEA, if it considers them subject to the assistance-capability requirements in the first place.

Moreover, if the FCC applies CALEA to private educational networks at all, it should construe the *Order* as applying *at most* to the Internet connection facilities at the edge of the network, for the reasons stated by the Higher Education Coalition. In addition, as proposed by the Coalition, any such requirement should be phased in over a five-year period as existing equipment is replaced in the normal course of events.

Conclusion

SDSU respectfully requests that the Commission clarify that private networks operated by higher education and research institutions are not subject to CALEA, or alternatively grant an exemption under Section 102(8)(C)(ii) of CALEA.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Peggy Miller", is written over a horizontal line.

Dr. Peggy Miller

President

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December 13, 2005